

**TITLE 3: TAXATION**  
**CHAPTER 3: PERSONAL INCOME TAXES**  
**PART 11: TAX CREDIT: INCOME ALLOCATION AND APPORTIONMENT**

3.3.11.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.  
[1/15/97; 3.3.11.1 NMAC - Rn, 3 NMAC 3.11.1, 12/14/00]

3.3.11.2 **SCOPE:** This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.  
[1/15/97; 3.3.11.2 NMAC - Rn, 3 NMAC 3.11.2, 12/14/00]

3.3.11.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[1/15/97; 3.3.11.3 NMAC - Rn, 3 NMAC 3.11.3, 12/14/00]

3.3.11.4 **DURATION:** Permanent.  
[1/15/97; 3.3.11.4 NMAC - Rn, 3 NMAC 3.11.4, 12/14/00]

3.3.11.5 **EFFECTIVE DATE:** 1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1/15/97; 3.3.11.5 NMAC - Rn & A, 3 NMAC 3.11.5, 12/14/00]

3.3.11.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.  
[1/15/97; 3.3.11.6 NMAC - Rn, 3 NMAC 3.11.6, 12/14/00]

3.3.11.7 **DEFINITIONS:** [Reserved]  
[1/15/97; 3.3.11.7 NMAC - Rn, 3 NMAC 3.11.7, 12/14/00]

3.3.11.8 **COMPUTATION FOR NON-RESIDENT TAXPAYERS WHO HAVE NEW MEXICO ROYALTY INCOME**

A. A non-resident taxpayer whose only income from New Mexico sources is royalty income of less than five thousand dollars (\$5,000) may elect to compute the New Mexico income tax due based on the gross royalty income received in lieu of filing a complete New Mexico tax return including the allocation and apportionment schedule. To figure taxable income, a taxpayer must add back the standard deduction, itemized deductions and personal exemption amounts excluded from net income under Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) through (3) for taxable years beginning on or after January 1, 1990 to the gross royalty income and then, using the computed taxable income, must determine the tax due according to the tax table appropriate to filing status.

B. As originally filed, 3.3.11.8 NMAC applies to taxable years beginning on or after January 1, 1985. The amendment December 29, 1989 is given retroactive effect to taxable years beginning on or after January 1, 1987. The amendment filed March 16, 1992 is given retroactive effect to taxable years beginning on or after January 1, 1990.  
[8/12/85, 12/29/89, 3/16/92, 1/15/97; 3.3.11.8 NMAC - Rn & A, 3 NMAC 3.11.8, 12/14/00]

3.3.11.9 **APPORTIONMENT OF DEDUCTION AMOUNTS**

A. Any individual who has income from both within and without this state and who claims the standard or itemized deductions provided by Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (5) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) and (2) for taxable years beginning on or after January 1, 1990 shall apportion the deduction amount claimed in accordance with this section (3.3.11.9 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the deduction amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for taxable year 1988. For the purposes of 7-2-2N(5) NMSA 1978, they have \$1,500 in New Mexico itemized deductions. Thirty percent of their income is calculated to be from outside New Mexico. They must reduce the amount of their deduction for non-New Mexico income by \$1,650, computed as follows:

Deduction for married persons filing jointly	\$4,000
New Mexico itemized deductions	<u>1,500</u>
Sub-Total	\$5,500
30% x \$5,500	<u>x .30</u>
Adjustment to non-New Mexico income	\$1,650

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of 3.3.11.9 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.  
[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.9 NMAC - Rn & A, 3 NMAC 3.11.9, 12/14/00]

### 3.3.11.10 **APPORTIONMENT OF PERSONAL EXEMPTION AMOUNT**

A. Any individual who has income from both within and without this state and who claims a personal exemption amount pursuant to Section 7-2-2 NMSA 1978, Subsection N, Paragraph (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraph (3) for taxable years beginning on or after January 1, 1990 shall apportion the personal exemption amount claimed in accordance with this section (3.3.11.10 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the personal exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: Z is a head of household with 2 dependent children. Twenty percent of Z's income for taxable year 1989 comes from outside New Mexico. Z must reduce the amount of deduction for non-New Mexico income by \$1,200, computed as follows:

Personal exemption amount per 7-2-2N(6) NMSA 1978	\$2,000
Exemptions allowed for federal purposes	<u>x 3</u>
Sub-Total	\$6,000
20% x \$6,000	<u>x .20</u>
Adjustment to non-New Mexico income	\$1,200

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of Section 3.3.11.10 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.  
[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.10 NMAC - Rn & A, 3 NMAC 3.11.10, 12/14/00]

### 3.3.11.11 **ALLOCATION OF COMPENSATION RECEIVED BY A RESIDENT**

A. All compensation received while a resident of New Mexico shall be allocated to this state whether or not such compensation is earned from employment in this state.

B. Example 1: X is a "resident" of New Mexico pursuant to Section 7-2-2 NMSA 1978. For six weeks during the taxable year, X was employed in the state of Nevada where X received compensation for personal services rendered. During this six-week period, X did not return to the state of New Mexico. X points out that inasmuch as Nevada does not impose an income tax, X is not eligible for a tax credit pursuant to Section 7-2-13 NMSA 1978. X's compensation earned in Nevada is allocable to New Mexico. There is no specific exemption or deduction which would authorize X to exclude the compensation earned in Nevada from the New Mexico base income.

C. Example 2: Y is registered to vote in this state, lives in the Canal Zone, is not physically present in New Mexico for any part of the taxable year and earns income from sources both within and without the state of

New Mexico. Y is a "resident" as that term is defined by Section 7-2-2 NMSA 1978, and is required to report and pay New Mexico income tax as a resident of New Mexico. Under the provisions of Section 7-2-11 NMSA 1978, Y is required to allocate all compensation earned to New Mexico and to allocate and apportion other items of income according to the provisions of the Uniform Division of Income for Tax Purposes Act. [7/2/90, 3/16/92, 1/15/97; 3.3.11.11 NMAC - Rn & A, 3 NMAC 3.11.11, 12/14/00]

### **3.3.11.12 DISTRIBUTIVE SHARES OF INCOME FROM UNINCORPORATED BUSINESS ENTITIES**

A. For the purposes of this section (3.3.11.12 NMAC), the term "unincorporated business entity" means any person engaging in business other than an individual, a sole proprietor or a corporation, except that corporations or other business entities electing to be treated as partnerships for federal income tax purposes are unincorporated business entities.

B. A taxpayer's distributive share of nonbusiness and business income shall be allocated and apportioned in accordance with this section (3.3.11.12 NMAC) to determine the portion of the distributive share of income taxable under the New Mexico Income Tax Act unless the taxpayer is qualified to elect, and has elected, to report the income in accordance with 3.3.11.8 NMAC.

C. The taxpayer shall allocate the taxpayer's distributive share of the unincorporated business entity's nonbusiness income to that taxpayer's state of residence in accordance with Sections 7-4-5 through 7-4-8 NMSA 1978. If the unincorporated business entity fails to provide the taxpayer with information distinguishing nonbusiness income from business income, the entire distribution from the unincorporated business entity must be considered business income and none of the income will be subject to allocation.

D. The taxpayer shall apportion the taxpayer's distributive share of the unincorporated business entity's business income to New Mexico by multiplying the taxpayer's distributive share times the New Mexico apportionment percentage determined by application of the Uniform Division of Income for Tax Purposes Act to the entire business income of the unincorporated business entity. If the unincorporated business entity fails to provide the taxpayer with the necessary New Mexico apportionment percentage or information sufficient to enable the taxpayer to calculate the percentage, the taxpayer shall apportion the taxpayer's entire distributive share of business income as if all of the entity's activities, property, payroll and sales were in New Mexico. [7/2/90, 3/16/92, 1/15/97; 3.3.11.12 NMAC - Rn & A, 3 NMAC 3.11.12, 12/14/00]

### **3.3.11.13 RETIREMENT INCOME**

A. "Retirement income" as used in this regulation means "retirement income" as defined by 4 U.S.C. Section 114(b)(1), as that paragraph may be amended or renumbered. Retirement income is compensation for purposes of the Income Tax Act.

B. Retirement income of a resident is allocable to New Mexico, regardless of the source of the retirement income, where it is paid from or whether the resident was a resident of New Mexico at the time of the employment which gave rise to the income. Retirement income received by a first-year resident after the first-year resident becomes a resident of New Mexico is allocable to New Mexico.

C. Retirement income of a non-resident is allocable to the non-resident's state of residence regardless of the fact that the income is paid by or derived from a source in New Mexico or the employment giving rise to the income took place in New Mexico. Retirement income received by a first-year resident before the first-year resident becomes a resident of New Mexico is not allocable to New Mexico. [12/15/99; 3.3.11.13 NMAC - Rn, 3 NMAC 3.11.13, 12/14/00]

### **3.3.11.14 INCOME FROM TRADING SECURITIES ON OWN ACCOUNT:**

A. Income of an individual, other than a dealer holding securities for sale to customers in the ordinary course of the dealer's trade or business, from the purchase or sale of securities for the individual's own account or from the writing of securities option contracts for the individual's own account is deemed to be income other than income from engaging in a trade or business. The income is allocable to the individual's state of residence.

B. Income of an investment entity from the purchase or sale of securities for the entity's own account or from the writing of securities option contracts in the entity's own account is deemed to be income other than income from engaging in a trade or business. The income attributable to each of the entity's owners is allocable to that owner's state of residence.

C. For the purposes of this regulation, the term "investment entity" means a pass-through entity, as that term is defined in Section 7-3-2 NMSA 1978, meeting the following criteria:

- (1) the entity is not a dealer holding securities for sale to customers in the ordinary course of the entity's trade or business;
- (2) each of the entity's owners during the taxable year is an individual; and
- (3) ninety percent or more of the entity's income during the taxable year derives from the purchase or sales of securities or from writing of securities option contracts.

[3.3.11.14 NMAC - N, 3/14/01]